

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Mr X who remained in immigration detention more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1990
<b>Ombudsman ID</b>	1002610-O
<b>Date of department's reports</b>	1 March 2017 and 30 August 2017
<b>Total days in detention</b>	912 (at date of department's latest report)

### Detention history

2 March 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of his bridging visa. He was remanded at a correctional facility.
6 March 2015	Transferred to Yongah Hill Immigration Detention Centre (IDC).
2 February 2017	Transferred to Villawood IDC.
12 July 2017	Transferred to Christmas Island IDC.
25 August 2017	Transferred to Yongah Hill IDC.
September 2017	Voluntarily departed Australia.

### Visa applications/case progression

31 March 2009	Arrived in Australia on a student visa valid until 24 August 2011.
23 March 2010	Lodged a combined partner visa application and granted an associated bridging visa.
4 June 2010	Student visa cancelled under s 116.
20 December 2010	Combined partner visa application refused.
16 September 2011	Lodged a Protection visa application and granted an associated bridging visa on 4 October 2011.
19 October 2011	Protection visa application was found to be invalid under s 46 and on 25 November 2011 the associated bridging visa ceased.
27 February 2014	Lodged a second Protection visa application and granted an associated bridging visa on 10 March 2014.
12 November 2014	Protection visa application was refused and on 19 December 2014 the associated bridging visa ceased.

February 2015	The Department of Immigration and Border Protection (the department) identified an error with the decision to refuse Mr X's combined partner visa application. On 12 February 2015 the department refused Mr X's residence visa application associated with the combined partner visa application and granted him a bridging visa.
2 March 2015	Bridging visa cancelled.
March 2015 – July 2017	Lodged multiple bridging visa applications, all of which were found to be invalid or refused. Mr X applied to the AAT for merits review on three occasions and the MRT affirmed the original decision
10 March 2015	Applied to the Migration Review Tribunal (MRT) for merits review of the department's decision to cancel his bridging visa.
20 March 2015	The MRT set aside the department's decision and substituted it with the decision that there was no bridging visa in effect to cancel. The MRT found that as the residence visa component of Mr X's combined partner visa application was undetermined until February 2015, the bridging visa granted to Mr X on 23 March 2010 had remained in effect until 12 March 2015 and the bridging visas granted in the interim were never in effect.  The department subsequently cancelled the bridging visa granted to Mr X on 23 March 2010.
30 March 2015	The MRT affirmed the decision to cancel Mr X's bridging visa.
19 May 2015	Applied to the Federal Circuit Court (FCC) for judicial review of the MRT's decision. On 6 November 2015 the FCC remitted the matter to the MRT for reconsideration.
20 January 2016	The Administrative Appeals Tribunal (AAT) <sup>1</sup> affirmed the department's decision to cancel Mr X's bridging visa. Mr X requested removal from Australia on the same day.
16 February 2016	Withdrew his request for removal.
24 February 2016	Applied to the FCC for judicial review of the AAT's decision. On 27 June 2016 the FCC remitted the matter to the AAT for reconsideration.
9 May 2016	Lodged a third Protection visa application. On 30 May 2016 the department found that that the application was ineligible as Mr X did not meet the guidelines under s 48.
8 August 2016	The AAT substituted the department's decision to cancel Mr X's bridging visa on 20 March 2015 with the decision that there was no bridging visa in effect to cancel.
1 March 2017	The department advised that as Mr X had no matters before the department, the courts or tribunals, he was on a removal pathway.  The department further advised that it was working with the authorities of Country A to obtain a travel document for Mr X, however this process was protracted as Mr X had not cooperated with the department in the past.

<sup>1</sup> On 1 July 2015 the MRT and Refugee Review Tribunal were merged into the AAT.

19 July 2017	Requested removal.
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### **Criminal history**

19 June 2015	Convicted of driving unlicensed and contravening a domestic violence order. He was disqualified from driving for two months.
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### **Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X received treatment for stress, insomnia and chronic migraines related to his criminal matters and immigration pathway. In June 2015 Mr X presented with chest pain and was provided with advice on stress management strategies. In September 2016 a psychiatrist noted that Mr X was experiencing detention fatigue and his worsening headaches were related to emotional unrest and psychological distress. He was prescribed with psychiatric medication, however he later advised that he never trialled the prescribed medication as he believed he no longer required treatment. In November 2016 he reported that pain relief medication was ineffective in treating his migraines and he was referred for a computed tomography (CT) scan. IHMS advised that Mr X did not attend appointments for the CT scan and was advised to present to a general practitioner as required.

### **Other matters**

28 April 2015	Mr X's wife, Ms Y, lodged a complaint with the Office of the Commonwealth Ombudsman in relation to Mr X's immigration detention. Ms Y advised that she married Mr X in October 2014 and he was remanded in custody following a domestic dispute, but they had since reconciled. The complaint was closed on 4 May 2015.
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### **Case status**

Mr X was detained on 2 March 2015 following the cancellation of his bridging visa and remained in an immigration detention facility for more than two and a half years.

Mr X was released from immigration detention when he voluntarily departed Australia in September 2017.